

NTSB Order No. EA-4048

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 13th day of December, 1993

Docket SE-11871

convicted on February 26, 1990, in the United States District Court for the Southern District of Mississippi, of possession with intent to distribute marijuana, a felony that carried a penalty of more than one year imprisonment. It was further averred that respondent served as an airman aboard an aircraft that was used to carry approximately 20 kilograms of marijuana into the United States.²

On appeal, respondent claims that the Administrator's charges must be dismissed as stale, given that he was indicted in August 1988, pleaded guilty in November 1989, and was sentenced in February 1990. The Administrator advised respondent in December 1990, that the matter was under investigation. By way of response, the Administrator maintains that lack of qualifications is at issue and, thus, respondent cannot rely on the stale complaint rule. In addition, the Administrator asserts that, given the uncontested facts of this case, section 609(c) of

²In his Notice of Appeal, filed with the Board on May 28, 1991, respondent admitted that "[o]n August 5, 1988, respondent was an airman and was aboard civil aircraft N82535 which was used to transport approximately 20 kilograms of marijuana. Respondent was apprehended by United States Customs agents that day." He also admitted that he pleaded guilty to possession with intent to distribute marijuana and was sentenced on February 26, 1990. Id.

The Administrator attached to his Motion for Summary Judgment, dated June 5, 1991, a certified copy of the judgment stating that respondent was sentenced to 33 months imprisonment.

Thus, respondent admitted all the material allegations of the complaint that would support mandatory revocation under section 609(c) of the Federal Aviation Act of 1958, as amended. Respondent was not deprived of his constitutional due process right to be heard or his statutory right to a hearing under section 609(c) of the Federal Aviation Act. See Administrator v. Anderson, NTSB Order No. EA-3963 (1993) at 6, and cases cited therein.

the Federal Aviation Act of 1958, as amended, requires the revocation of respondent's airman certificate.³

³Section 609(c), involving "Transportation, Distribution, and other Activities Related to Controlled Substances," states, in pertinent part:

(c)(1) The Administrator shall issue an order revoking the airman certificates of any person upon conviction of such person of a crime punishable by death or imprisonment for a term exceeding one year under a State or Federal law relating to a controlled substance (other than a law relating to simple possession of a controlled substance), if the Administrator determines that (A) an aircraft was used in the commission of the offense or to facilitate the commission of the offense, and (B) such person served as an airman, or was on board such aircraft, in connection with the commission of the offense or the facilitation of the commission of the offense. The Administrator shall have no authority under this paragraph to review the issue of whether an airman violated a State or Federal law relating to a controlled substance.

(2) The Administrator shall issue an order revoking the airman certificates of any person if the Administrator determines that (A) such person knowingly engaged in an activity that is punishable by death or imprisonment for a term exceeding one year under a State or Federal law relating to a controlled substance (other than any law relating to simple possession of a controlled substance), (B) an aircraft was used to carry out such activity or to facilitate such activity, and (C) such person served as an airman, or was on board such aircraft, in connection with such activity or the facilitation of such activity. The Administrator shall not revoke, and the National Transportation Safety Board [NTSB] on appeal under paragraph (3) shall not affirm the revocation of, a certificate under this paragraph on the basis of any activity if the holder of the certificate is acquitted of all charges contained in an indictment or information which relate to controlled substances and which arise from such activity.

(3) Prior to revoking an airman certificate under this subsection, the Administrator shall advise the holder thereof of the charges or any reasons relied upon by the Administrator for his proposed action and shall provide the holder of such certificate an opportunity to answer any charges and be heard as to why such certificate should not be revoked. Any person whose certificate is revoked by the Administrator under this subsection may appeal the Administrator's order to the [NTSB] and the Board shall, after notice and a hearing on the record, affirm or reverse

After consideration of the briefs of the parties and the record, the Board concludes that safety in air commerce or air transportation and the public interest require that the Administrator's order of revocation be affirmed.

Under the Board's stale complaint rule, 49 C.F.R. § 821.33, allegations of infractions that occurred more than six months prior to the Administrator advising a respondent of any pending charges may be dismissed unless an issue of lack of qualifications is presented. Referring to 14 C.F.R. § 61.15(a),⁴ respondent further asserts that the charges against him are stale. He claims that he did not demonstrate a lack of qualifications because, at the time the Administrator issued the notice of proposed certificate action, respondent "did not and, thereafter, has not lacked the qualifications necessary to hold an airman certificate." Respondent's brief at 3.

(..continued)

the Administrator's order. In the conduct of its hearings, the [NTSB] shall not be bound by findings of fact of the Administrator....

⁴A typographical error in respondent's brief referred to section 61.159(a). Looking at the text of the regulations, it is clear that respondent meant 61.15(a), which states:

§ 61.15 Offenses involving alcohol or drugs.

(a) A conviction for the violation of any Federal or state statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marihuana, or depressant or stimulant drugs or substances is grounds for-

(1) Denial of an application for any certificate or rating issued under this Part for a period of up to 1 year after the date of final conviction; or

(2) Suspension or revocation of any certificate or rating issued under this part.

Respondent's reliance on section 61.15(a) is in error. He argues that when he received the Notice of Proposed Certificate Action in April 1991, more than one year had passed since the date of his conviction. In section 61.15(a), however, the reference to one year is made only in the context of the denial of an application for a certificate, not regarding the revocation of an existing certificate.

The Administrator issued the order of revocation as mandated by section 609(c) of the Federal Aviation Act which requires that an airman's certificate be revoked if 1) an airman has been convicted of a felony involving a Federal or state controlled-substance related law; and 2) the commission of the offense involved the use of an aircraft. Both circumstances are present here, thereby justifying the revocation.

Despite the fact that revocation is mandatory under section 609(c),⁵ it is well-settled Board precedent that a revocation order implies an allegation of lack of qualifications.⁶ Respondent, through his conduct, illustrated that he lacks the care, judgment, and responsibility of a certificate holder.

⁵See Administrator v. Rawlins, 5 NTSB 632 (1987) aff'd, Rawlins v. NTSB, 837 F.2d 1327 (5th Cir. 1988).

⁶See Administrator v. Finefrock, 5 NTSB 632 (1985), where an airman's certificates were revoked following his conviction for conspiracy to import marijuana and the determination that he had operated an aircraft in the commission of the offense. The Board stated, "[r]evocation is predicated on lack of qualifications, which is a matter not only of technical skill and proficiency but also of care, judgment and responsibility." Id. at 633. The same may be said of respondent in the instant case.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The Administrator's order is affirmed.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HAMMERSCHMIDT, and HALL, Members of the Board, concurred in the above opinion and order.